

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

★ SEP 27 2011 ★

BROOKLYN OFFICE

MAURICE PHILLIPS,

Plaintiff,

-against-

**STIPULATION OF
SETTLEMENT AND
DISCONTINUANCE**

10 Civ. 4731 (ERK)(SMG)

THE CITY OF NEW YORK; PAUL V.
MCCARTHY, Shield No. 21020; Police Officer
ELIOT ARIAS, Shield No. 1808; Police Officer
DANIEL PRIBER, Shield No. 23665; JANE DOE,
individually and in her official capacities, (the name
Jane Doe being fictitious and the true name is
presently unknown),

Defendants.

X

WHEREAS, plaintiff commenced this action by filing a complaint on or about October 15, 2010, and an amended complaint on or about February 17, 2011 (hereinafter "complaint"), alleging violations of his constitutional rights; and

WHEREAS, defendants have denied any and all liability arising out of plaintiff's allegations; and

WHEREAS, defendants served plaintiff with a Rule 68 Offer of Judgment on June 27, 2011;

WHEREAS, plaintiff accepted the Rule 68 Offer of Judgment on or about July 5, 2011;

WHEREAS, plaintiff has authorized counsel to settle this matter on the terms set forth below;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

1. All claims in the above-referenced action asserted by plaintiff MAURICE PHILLIPS are hereby dismissed, with prejudice, and without costs, expenses, or fees except as specified in paragraphs "2," "3," and "5" below.

2. Defendants City of New York agrees to pay plaintiff MAURICE PHILLIPS the sum of FIVE THOUSAND AND ONE DOLLARS (\$5,001), plus reasonable attorneys' fees, expenses, and costs, up to the date of the Rule 68 Offer, in full satisfaction of all claims by plaintiff against defendants. In consideration for the payment of this sum, plaintiff agrees to dismissal of all of the claims brought against defendants, THE CITY OF NEW YORK; PAUL V. MCCARTHY, Shield No. 21020; Police Officer ELIOT ARIAS, Shield No. 1808; Police Officer DANIEL PRIBER, Shield No. 23665 and to release all defendants, and any present or former employees and agents of the City of New York or any agency thereof, from any and all liability, claims, or rights of action which were or could have been alleged in this action.

3. Plaintiff has assigned his rights to attorneys' fees, expenses, and costs to his attorney, Gabriel P. Harvis, Esq.

4. Plaintiff MAURICE PHILLIPS shall execute and deliver to the defendants' attorney all documents necessary to effect this settlement including, without limitation, a General Release based on the terms of paragraphs "2" and "3" above and an Affidavit of Status of Liens. If Medicare has provided payment and/or benefits for any injury or condition that is the subject of this lawsuit, prior to tendering the requisite documents to effect this settlement, plaintiff shall have notified Medicare and shall submit with the settlement documents a Medicare final demand letter for conditional payments. A Medicare Set-Aside

Trust may also be required if future anticipated medical costs are found to be necessary pursuant to 42 U.S.C. §1395y(b) and 42 C.F.R. §§411.22 through 411.26.

5. Counsel for plaintiff and defendants will resolve plaintiff's claim for reasonable attorneys' fees, expenses and costs by pursuant to a separate stipulation.

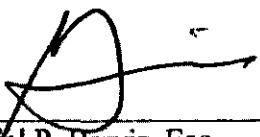
6. Nothing contained herein shall be deemed to be an admission by the defendants that they have in any manner or way violated plaintiff's rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules, regulations or bylaws of any department or subdivision of the City of New York. This stipulation shall not be admissible in, nor is it related to, any other litigation or settlement negotiations.

7. Nothing contained herein shall be deemed to constitute a policy or practice of the City of New York.

8. Plaintiff agrees to hold harmless the defendants, THE CITY OF NEW YORK; PAUL V. MCCARTHY, Shield No. 21020; Police Officer ELIOT ARIAS, Shield No. 1808; Police Officer DANIEL PRIBER, Shield No. 23665 regarding any liens or past and/or future Medicare payments, presently known or unknown in connection with this matter. If conditional and/or future anticipated Medicare payments have not been satisfied, defendant reserves the right to issue a multiparty settlement checks, naming Medicare as a payee or to issue a check to Medicare directly based upon Medicare's final demand letter.

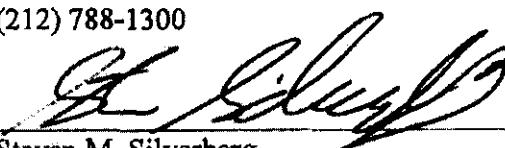
9. This Stipulation and Order contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation and Order regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

GABRIEL P. HARVIS
Attorney for Plaintiff
Harvis and Saleem, LLP
304 Broadway, 14th Floor
New York, NY 10007
(212) 323-6880

By: 
Gabriel P. Harvis, Esq.
Attorney for Plaintiff

Dated: New York, New York
September 13, 2011

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendants
100 Church Street, Rm.
New York, New York 10007
(212) 788-1300

By: 
Steven M. Silverberg
Assistant Corporation Counsel

Dated: New York, New York
September 17, 2011

SO ORDERED:

Dated: New York, New York

9/23, 2011

s/Edward R. Korman
HON. EDWARD R. KORMAN
UNITED STATES DISTRICT JUDGE